IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 10164 of 2004

Between:

Smt. P. Anasuja, W/o late P. Eshwaraiah ,
H. No.7-81 (old), H. No.10-134 (New) Main road, Shadnagar,
Faruqnagar,Mandal, Mahabubnagar Dist .

..... PETITIONER

AND

1 The Secretary, Gram Panchayat, Shadnagar, Faruqnagar Mandal, Mahabubnagar district
2 The District Collector, Mahaubnagar, Mahabubnagar District .

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ order or direction, preferably a Writ in the nature of Mandamus, declare that the initiation of action on the part of the 1st respondent in constructing shop in the Western side of the petitioner H.No. 7-81 (Old), H. No. 10-134 (New), Main Road, Shadnagar, Faruqnagar Mandal, Mahabubnagar District despite of the specific judgment and decree made in O.S. No. 57 of 1983 from the file of the Dist Munsiff Court, Shadnagar by leaving 3 ft. seri is arbitrary illegal and unsustainable infringing Arts, 14 and 16 of the Constitution of India.

For the Petitioner: MR. SAMINENI KISHORE, Advocate.

For respondent No.1: Smt.Jyothi Eswar Gogineni

For the Respondent 2.: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court Made the Following :

ORDER:

Heard the learned counsel for the petitioner and

Smt. G. Jyothi Eswar, learned standing counsel for the 1st respondent.

The petitioner claims to be owner of house bearing No. 7-81 (old), H.No.10-134(new), Faruqnagar, Shadnagar, which faces the 53 feet wide road of the Gram Panchayat on the Western side. When the Gram Panchayat passed a resolution to construct some mulgies on the said road, leaving 3 feet for ingress and egress to the houses abutting the road, petitioner's husband filed O.S.No.57 of 1983 on the file of Junior Civil Judge, Shadnagar, which was dismissed on 24-9-1999. The appeal A.S. No. 25 of 1993 filed thereagainst on the file of the Additional District Judge, Mahabubnagar, was also dismissed by judgement dated 23-9-1998. Pursuant thereto, it is the case of the petitioner that the Gram Panchayat erected sixteen temporary mulgies in the said place and the 1st respondent is collecting rents thereon. Now, it is the grievance of the petitioner that the respondents are taking steps to make pucca construction by removing the makeshift mulgies by leaving 3 feet road.

The learned Standing Counsel for the 1st respondent submits that the petitioner's husband had unsuccessfully filed civil suit and appeal against the order passed in the civil suit. When the Gram Panchayat was about to take up construction of mulgies, some of the squatters on the mulgies filed writ petitions before this Court, and this Court in W.P. No. 9883 of 2004 and batch, by order dated 18-6-2004 disposed of the said writ petitions directing the Gram Panchayat not to evict the squatters without following the due process of law. Pursuant to the said judgement, the squatters were issued notice, and pursuant thereto, the squatters have themselves undertook to vacate the makeshift mulgies. After the squatters vacated the makeshift mulgies, the Gram Panchayat took up the construction of mulgies in accordance with the resolution passed by the Gram Panchayat on 8-2-1993 by leaving 3 feet space for ingress and egress to the occupants of the houses whose houses are situated on the road.

Admittedly, the resolution passed by the Gram Panchayat for construction of pucca mulgies and the tender process initiated in pursuance thereof, was unsuccessfully

assailed by the petitioner's husband in the civil suit as well as the appeal filed against the order made in the civil suit. When the petitioner's husband had miserably failed in both the trial Court as well as the appellate Court and suffered a decree against him, I fail to understand how the petitioner can assail the construction of mulgies, which are being taken up by the Gram Panchayat in pursuance of its resolution, which stood upheld by the trial Court and appellate Court, in this writ petition, which is a public law remedy. The Gram Panchayat admittedly is making construction of the mulgies on the road belonging to them, and that too by leaving 3 feet space for ingress and egress to the occupants of the houses abutting the road. When the easementary right of the petitioner stood protected, the petitioner cannot have any grievance. The conduct of the petitioner in filing writ petition after losing in the civil litigation amounts to abusing the process of the Court, which cannot be permitted.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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24-6-20034

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To

1 The Secretary, Gram Panchayat, Shadnagar, Faruqnagar Mandal, Mahabubnagar district
2 The District Collector, Mahaubnagar, Mahabubnagar District .

3. Two copies to Govt.Pleader for Panchayat Raj & Rural Development, High Court of A.P., Hyderabad. (O.U.T.)

4. Two C.Ds.